

1 LAWRENCE A. JACOBSON, SBN 057393  
2 SEAN M. JACOBSON, SBN 227241  
3 COHEN AND JACOBSON, LLP  
4 66 Bovet Road, Suite 285  
5 San Mateo, CA 94402  
6 Telephone: (650) 261-6280  
7 *laj@cohenandjacobson.com*

8 Attorneys for Amir Shahmirza  
9 (Agent for Komir, Inc.) and Komir, Inc.

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 In re

Case No. 19-30088 (DM)

14 PG&E CORPORATION,

Chapter 11

15 - and -

(Lead Case) (Jointly Administered)

16 PACIFIC GAS AND ELECTRIC  
17 COMPANY,

18 Debtors.

**EX PARTE MOTION FOR LEAVE TO  
FILE SUPPLEMENTAL MATERIALS  
AFTER HEARING (TWO PAGE  
LIMIT)**

19 G Affects PG&E Corporation  
20 G Affects Pacific Gas and Electric Company  
21 O Affects both Debtors

**Date: Ex Parte  
Time: Ex Parte  
Place: Ex Parte**

1 Amir Shahmirza, as agent of, and acting on behalf of, Komir, Inc. (“Komir” or  
2 “Claimant”), submits this *Ex Parte* Motion for Leave to File Supplemental Materials after  
3 Hearing (Two Page Limit) pursuant to Local Civil Rule 7-3(d) and Bankruptcy Local Rule 1001-  
4 2 and represents as follows:

- 5 1. While the Court solicited evidentiary references during the hearing regarding the  
6 alignment, angles and height of the reconstructed lines, for purposes of this  
7 Motion only, Komir refers to the Declaration of John Raines, particularly Exhibit  
8 A-4 thereto, for the admission by PG&E that it lowered the repositioned lines by  
9 5 feet at the tower and 4.9 feet at Komir’s property with the lines lowered  
10 continuously across Komir’s property for a distance of 304 feet to the edge of the  
11 flood channel, i.e., the entire north side of the Komir’s property with a length of  
12 304 feet has been affected by lowering of transmission lines affecting Komir’s  
13 intended use, i.e., to erect or construct any building, improvement or structure`  
14 which caused Komir to objected and to revoke his consent. Komir seeks leave to  
15 file supplemental material that demonstrably depicts the amount of lowered height  
16 over the distance indicated in the Raines Declaration to eliminate confusion and  
17 uncertainty as to PG&E’s admitted reduction of line height.
- 18 2. Prior to the hearing, no pleading indicated any need for clarification of the nature  
19 of Komir’s use of the land, or proof of limitations on Komir’s surface use, or  
20 proof of limitations on Komir’s use of the space between the surface of the land  
21 and the Transmission Lines that PG&E now asserts must remain clear of buildings  
22 or other structures or tall items and cannot be used for construction or  
23 development, as relevant to the determination of the “exclusivity” of PG&E’s use  
24 of the air space occupied by the Transmission Lines.
- 25 3. A primary issue presented in Claimant’s Second Motion for Partial Summary  
26 Judgment is whether PG&E’s use of the airspace occupied by its Transmission  
27 Lines was sufficiently exclusive of any shared use by Claimant as to require that  
28

1 PG&E pay real property taxes as a prerequisite to obtaining any prescriptive rights  
2 to occupy Komir's airspace.

3 4. Responding Parties PG&E Corporation and Pacific Gas & Electric Company  
4 ("Debtors") presented in PG&E'S Memorandum of Points and Authorities in  
5 Opposition to Claimant's Second Motion for Partial Summary Judgment  
6 ("Opposition") the argument that Debtors' use of the space occupied by the  
7 Transmission Lines was not exclusive because Komir would be able to use the  
8 surface land and the subterranean portions of the Property unaffected by the  
9 Transmission Lines above the surface without comment on the use of the Komir  
10 Property above the land under and adjacent to the Transmission Lines.  
11 (Opposition: 11:25-27). Claimant argues that Komir's use of the land is not  
12 determinative of exclusivity of PG&E's occupation of the airspace.

13 5. At the hearing, the Court made inquiries regarding potential uses of the surface  
14 area of the Komir Property and regarding proof of limitations on Komir's use of  
15 the surface area as reflected in these non-exclusive sections of the transcript:

16 62:9-11 "But is there any evidence that in all the years that your client  
17 owned the property, that he didn't have access to and some use of  
the property;"

18 63:3 and 9-10 "But is there proof that he can't use it? ... is there any proof, rather,  
19 that he can't use the property for anything?";

20 65:19-21 "And even though PG&E argues that your client can use the  
property – and you haven't proven that he can't"; and

21 68:19-25 "If Komir wanted to grow flowers on the property, tulips ... could  
22 he prevent him from growing tulips on the property? No. right.  
23 they might say we don't think that's a good idea to grow tulips  
under the power lines. But they couldn't prevent him from doing  
it, could they?"

24 6. The Court also commented on potential unfairness of a requirement that PG&E  
25 pay real property taxes to obtain prescriptive rights while Komir might construct a building,  
26 generate income, not be required to pay any real property taxes, and not be required to share  
27 income (Transcript at 70:22 - 71:7).

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1           7.       In view of the foregoing, the extent, if any, that PG&E would, or would not,  
2 authorize or oppose use of the land to erect or construct any building, improvement or structure  
3 presents an undetermined factor in the analysis of the requirement for payment of real property  
4 taxes that could not have been anticipated in view of the legal issues submitted for Summary  
5 Adjudication.

6           8.       Komir seeks this Court's leave to file a two page supplemental brief and/or  
7 declaration concerning the limitations imposed on Komir's use of the land and the space between  
8 the land and the Transmission Lines as a consequence of PG&E's occupation of Komir's  
9 airspace and, for offer of proof, states:

10           (a)      PG&E has communicated to Amir Shahmirza that PG&E considers that Komir  
11 may not erect or construct any building, improvement or structure under or near  
12 the Transmission Lines for reasons relating to the characteristics of the  
13 Transmission Lines,<sup>1</sup> i.e., PG&E would not approve and would oppose any use of  
14 the space between the land and the Transmission Lines for those purposes and

15           (b)      As a consequence of not being able to erect or construct any building,  
16 improvement or structure between the land and the Transmission Lines, PG&E  
17 would never be in situation of being required to pay the real property taxes as a  
18 prerequisite to obtaining prescriptive rights while Komir would enjoy non-shared  
19 income from a building under the Transmission Lines (conversely, PG&E  
20 generates substantial income from the sale to the entire airport and northern  
21 Peninsula of the electricity that crosses Komir's property).

22           WHEREFORE, Komir prays that the Court authorize the filing of supplemental materials  
23 by both sides not to exceed two pages concerning the matters set forth above with filing to occur  
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25           <sup>1</sup> By letter dated December 27, 2023, to Messrs. Steven Lamb and Thomas Rupp, Komir has  
26 requested that PG&E confirm its position as to whether it considers that Komir may erect or  
27 construct any building, improvement or structure under the Transmission Lines, or not, and whether  
28 PG&E would oppose such construction but has not yet received a response. To date, PG&E has not  
responded.

1 no later than Friday, January 5, 2024.

2 Respectfully submitted.

3 Dated: January 3, 2024

COHEN AND JACOBSON LLP

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By: /s/ Lawrence A. Jacobson  
Attorneys for Claimant

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